



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 15, 2015

Ms. Dendra Dengler
419 Beach Drive
Arcata, CA 95221

Re: Your Request for Advice
Our File No. A-15-100

Dear Ms. Dengler:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest. We are also not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate.

QUESTION

Does either the Act or Section 1090 prohibit your participation in decisions regarding a memorandum of understanding and the accompanying lease between Redwood Coast Montessori Charter School and the Manila Community Services District?

CONCLUSION

No. Under the Act, there is no reasonably foreseeable financial effect on your property and under Section 1090, you do not have an interest in the contract between the parties.

FACTS

You are a member of the board of directors for the Manila Community Services District in Arcata, California. Your home is within 300 feet of the Manila Community Center, which the District controls. Within the Community Center are the Family Resource Center and the Redwood Coast Montessori School. The Montessori school would like to enter into a memorandum of understanding with the District to alter the terms of its lease and assume control of the Family Resource Center.

The District now leases six rooms at the center to Redwood Coast Montessori School. The Manila Family Resource Center also rents two rooms at the center. The District fiscally sponsors

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

the Manila Family Resource Center, which is funded by grant monies from First Five and Humboldt County Department of Health and Human Services. Various users at different times share the large gymnasium-like main hall. The Montessori school wishes to expand further, possibly taking one or both rooms the Family Resource Center is currently utilizing and renting.

You live within 300 feet northwest of the District's community center. There are two other parcels (one with a triplex and the other a three-story house) between your residence and the community center. The road you live on, Beach Drive, exits onto Peninsula Drive, approximately 500 feet from the northeast edge of your property line. From that point there are four residences and another street (Shell Drive) to the edge of the district property line where the community center is sited. There is a three-story house and a forested wetland area so you have no view of the community center from your home.

ANALYSIS

The Act

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. A public official has a financial interest in a decision within the meaning of the Act if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's interests, including an interest in real property. (Section 87103.)

A financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable. A governmental decision's effect on real property is material if the decision:

(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;

(11) Would consider any decision affecting real property value located within 500 feet of the property line of the official's real property, other than commercial property containing a business entity where the materiality standards are analyzed under Regulation 18702.1. Notwithstanding this prohibition, the Commission may provide written advice allowing an official to participate under these circumstances if the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official's property; or

(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.

The decisions you describe involve changes to the contract between the Montessori School and the District. Even if the school takes on more students or assumes control of the family resource center, there do not seem to be any significant changes to the character of your neighborhood that would impact your property, nor are the standards above met. Therefore, you may participate in decisions regarding the proposed changes to the lease.

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended "not only to strike at actual impropriety, but also to strike at the appearance of impropriety." (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, "the prohibited act is the making of a contract in which the official has a financial interest." (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) On this point, we find no conflict under Section 1090. The contract you describe is either an amendment to the lease or memorandum of understanding (or both) between the District and the Montessori School. You do not have a financial interest in either contract.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Heather M. Rowan
Senior Counsel, Legal Division

HMR:jgl